

PCLL Conversion Examination
June 2023
Examiner's Comments
Evidence

The overall performance was poor. Better answers followed an IRAC structure, setting out each step in the logic, whereas those who did not do well tended to copy out related but inapplicable principles from notes.

Performance on Question 1 was poor. It was not straightforward as it required composite understanding across multiple topics, as well as practical considerations. 1(a) required a discussion on hearsay and an exception. 1(b) related to using the witness to show a prior inconsistent statement, whereas students ought to realize that in 1(c), there was no need to call the witness, and in any event would have been inadmissible as a prior consistent statement.

Many students performed well on question 2, which concerned burden of proof. Students were expected to discuss the various elements of the offence and defences intended to be raised, and on which party the legal & evidential burden they fell on, with authorities in support.

The issue in question 3 was clearly identified for the candidates. 3(a) required a discussion on privilege, and in particular whether sending unprivileged documents to a lawyer would change its status. 3(b) concerned the court's approach to the admissibility of illegally obtained evidence. It is unfortunate that very little candidates were aware of the leading HK cases in this respect.

The subject matter of question 4 was very narrow. 4(a) expected candidates to discuss the prohibition in *R v Moore* (1956) 40 Cr App R 50 and *R v Yu Tat-hung* (1984) Mag App No 284/84. 4(b) required a discussion on whether the photograph is relevant to the fact in issue, if so, whether it is being used as real evidence (which would not be hearsay) or documentary evidence (which would be hearsay). If it is being relied on as real evidence, the legal test which must be satisfied is relevant and prima facie authenticity.

Question 5 was quite straightforward. 5(a) merely required students to regurgitate the rule against prior consistent statements, and an exception to it. 5(b) concerned specifically *HKSAR v Leung Chi Keung*, whereby the CFA explained the difference between distress and recent complaint.